IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5874 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESH TEXTILE INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR BB NAIK for Petitioner.

MR DN PATEL for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 09/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Central Government Standing Counsel waives service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner, carrying on business of processing clothes and fabrics, has challenged the order dated 27th May 2002 passed by the CEGAT, Mumbai, on the petitioner's stay application, by which the petitioner is required to deposit a sum of Rs. 5,00,000/= towards duty and waiving of deposit of remaining payment of duty and penalty and staying their recovery.

3. Heard Mr. B.B. Naik, learned counsel for the petitioner and Mr. D.N. Patel, learned counsel for the respondents.

4. In the peculiar facts and circumstances of the case, without going into discussion on the merits of the controversy which is pending before the CEGAT, it appears to us that the interests of justice would be served if this petition is disposed of in terms of the following directions:

(i) The petitioner shall deposit a sum of Rs. 1,50,000/= towards the excise duty, which is the subject matter of the petitioner's Appeal No. E.496/01-Mum., arising out of the Order-in-Original No. 41/Comm.2000 dated 31st October 2000 passed by the Commissioner of Central Excise (Appeals), by 31st July 2002.

(ii) Upon the aforesaid amount being deposited, the CEGAT shall hear the petitioner's appeal on merits.

(iii) Upon the aforesaid amount being deposied, the respondents shall not make any recovery of the excise duty/penalty/fine on the basis of the aforesaid Order-in-Original dated 31st October 2000 passed by the Commissioner of Central Excise (Appeals), Ahmedabad.

5. It will be open to the parties to request the CEGAT to take up the petitoner's appeal for early hearing.

6. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute with no order as to costs.

7. The writ shall be served to the CEGAT for which direct service shall be effected by the petitioner.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]